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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

5 WILLIAM D. WEBSTER,

6 Plaintiff,

7 v.

8 KITSAP COUNTY SHERIFF'S OFFICE, a  
9 municipal entity;  
10 KITSAP COUNTY CENTRAL  
COMMUNICATIONS, a municipal entity;  
11 KITSAP COUNTY DEPUTY SHERIFF  
COLLEEN SMITH, in her official and personal  
12 capacity;  
KITSAP COUNTY DEPUTY SHERIFF  
13 PATRICK J. DAWSON, in his official and  
personal capacity;  
14 KITSAP COUNTY DEPUTY SHERIFF  
FREDERICK N. BREED, in his official and  
15 personal capacity;  
KITSAP COUNTY DEPUTY SHERIFF  
16 JOHN C. LOFTHUS, in his official and  
personal capacity;  
17 KITSAP COUNTY PROSECUTING  
ATTORNEY JUSTINE B. ZAUG, in his  
official and personal capacity,

18 Defendants.

Case No. C09-5036FDB

ORDER DENYING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT


19 Plaintiff moves for a default judgment asserting that as of April 14, 2009, and despite service  
20 of the amended complaint upon the defendants, and despite having printed in the Kitsap Sun  
21 Newspaper, Bremerton, Washington a Summons for all Defendants in this case, Defendants have not  
22 delivered an answer within the 20 days required of Fed. R. Civ. P. 12, and that it has been 46 days  
23 since the February 29, 2009 mailing of the Summons and Complaint, 49 days since the physical  
24 service of these documents by David Rayner, and 30 days since the publication of notice.  
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1 Defendants respond that they have not answered in this case because they have never been  
2 properly served and that service was defective in at least two ways: First, Plaintiff caused the  
3 summons and complaint to be delivered to specific county offices instead of serving the Kitsap  
4 County Auditor as required by RCW 4.28.080(1); and second, service by publication is not  
5 authorized by any court rule or statute. As to the claims against the Kitsap County Sheriff's Office  
6 and Kitsap County Central Communications, municipal departments, Defendants argue federal courts  
7 have held since *Brandon v. Holt*, 469 U.S. 464, 472 (1985) that municipal departments cannot be  
8 sued separately. *See e.g. Vance v. Santa Clara Co.*, 928 F. Supp. 808, 815-16 (N.D. Cal.  
9 1996)(dismissing department of corrections as improper defendant). Additionally, 42 U.S.C. § 1983  
10 applies to "persons" acting under color of state law. While it is undisputed that a municipality may  
11 be sued as a "person" under Section 1983, "neither a state nor its officials acting in their official  
12 capacities are 'persons' under § 1983." *Wills v. Michigan Dept. Of State Police*, 491 U.S. 58, 71  
13 (1989). Finally, Defendants articulate the nine specific instances when service by publication is  
14 permitted under RCW 4.28.100, and argue that none apply in this case.

15 The Court having reviewed the Plaintiff's First Amended Complaint, the arguments and  
16 submissions of the parties, and the remainder of the record, concludes that Plaintiff's Motion for  
17 Entry of Default Judgment is not well taken and must be denied.

18 ACCORDINGLY, IT IS ORDERED: Plaintiff's Motion for Default Judgment [Dkt. # 11] is  
19 DENIED.

20 DATED this 6<sup>th</sup> day of May, 2009.

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22   
23 FRANKLIN D. BURGESS  
24 UNITED STATES DISTRICT JUDGE  
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